

Article II wasn't coming to mind either—goodness gracious.

Then she flunked yet another question about legal philosophy, and, then again, she flunked still another question about the most controversial Supreme Court case this term.

Apparently, when this particular nominee had been asked to list the top 10 most impactful cases she had litigated in court, she could only come up with 6. At no stage of her professional career has the judge focused on Federal law. At no point had she ever even appeared in Federal court.

So get this. In one of these six most significant cases she took, she lost to a defendant who forewent legal counsel and took the risky step of representing herself. This wasn't some rooky mistake either. The nominee was over a decade out of law school when she lost to an unrepresented party in one of her biggest cases.

Is this the caliber of legal expert with which President Biden is filling the Federal bench—for lifetime appointments? Is the bar for merit and excellence really set this low?

For years, now, Washington Democrats' rhetoric about judicial nominations has often treated actual qualifications as an afterthought. Democrats were not particularly impressed or moved by top-shelf professional excellence or the academic brilliance that the last Republican administration's nominees possessed, literally, in spades. And, apparently, they don't count those qualities as particularly high priorities now that they are the ones doing the nominating.

The American people deserve an impartial judiciary that is full of the finest legal minds our country has to offer. The American people deserve the best and the brightest.

Alas, but sadly, the Biden administration's questionable constitutional judgment is not limited to some of their judicial nominations. In one important constitutional case after another, the Biden administration and his lawyers have come down on the wrong side of the American people's rights and liberties and have gotten slapped down in court as a result.

This last year, for example, in the Bruen case, the Biden administration threw its weight behind unconstitutional New York State restrictions on the Second Amendment that plainly violated citizens' rights to keep and bear arms. President Biden sent one of his top lawyers to help with the oral arguments, but the Democrats got the Constitution backward and lost the case.

In *West Virginia v. EPA*, President Biden went all in trying to defend massive unconstitutional overreach by his own Environmental Protection Agency. His Solicitor General argued the case herself, but the administration lost badly. The plain meaning of our laws and our Constitution actually won out.

In *Carson v. Makin*, President Biden fought to maintain unconstitutional

anti-religious discrimination in school voucher programs. Again, he lost, and the American people and their Constitution won.

Washington Democrats had their blatantly unconstitutional vaccine mandate for the private sector tossed out by the Supreme Court. They had their obviously illegal top-down mask mandate for transportation tossed out by a district judge. Oh, and, by the way, when the judge was nominated, Democrats howled that she was unqualified. But with a Supreme Court clerkship under her belt, she had incomparably more experience in Federal court than the nominee who failed Senator KENNEDY's bar exam.

Over and over, on issue after issue, this Democratic administration sides against the American people, against the Constitution, and against the rule of law.

The American people deserve an administration that respects their rights and liberties, that understands our Constitution, and that chooses both policies and nominees accordingly.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. THUNE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

IMMIGRATION

Mr. THUNE. Mr. President, it only took 2 years—2 years—for the President to acknowledge the crisis that has been raging along our southern border almost since the day he took office. Over those 2 years, we have seen record numbers of migrants attempting to cross our southern border. We have seen record numbers of migrants die—attempting the dangerous crossing of our southern border. We have seen the Border Patrol overwhelmed, border cities overwhelmed, and dangerous drugs continue to flood across our border and reach communities around our Nation.

Yet, for months and months, the President did essentially nothing. In fact, he acted as if the crisis didn't even exist. I am glad that, at long last, the President seems to be acknowledging this crisis, even if his recent visit to the border was scripted and controlled.

But it is appalling to think of how much human misery could have been avoided if the President had lived up to his national security obligations and addressed the border disaster many months ago. I suppose it is not a surprise that the President wasn't eager to acknowledge just how bad things were because that might have drawn extra scrutiny to the President's border policies, policies that played a substantial role in creating this crisis in the first place.

From the moment he took office and even before, President Biden made it clear that border security was at the bottom of his priority list. On his very first day in office, President Biden rescinded the declaration of a national emergency at our southern border. He halted construction of the border wall. He revoked a Trump administration order that called for the government to faithfully execute our immigration laws. And his Department of Homeland Security issued guidelines pausing deportations except under certain conditions. And that was all on his first day in office.

Well, needless to say, the effect of all this was to declare to the world that the U.S. borders were effectively open, and we have seen the result: 2 years of soaring illegal immigration. Since President Biden took office, there have been more than 4.5 million attempted illegal border crossings. Now, to put that number in perspective, that is roughly equal to the entire population of South Dakota, plus the entire population of Delaware, Wyoming, Nebraska, and then some.

Last month, 251,487 migrants were apprehended attempting to cross our southern border, the highest monthly number ever recorded. And, of course, these numbers just refer to individuals Customs and Border Protection managed to apprehend. There have been a staggering 1.2 million known “got-aways” since President Biden took office, individuals that the Border Patrol saw but were unable to apprehend.

President Biden has talked about wanting a safe, orderly, and humane immigration system. Well, up until now, he has failed on all fronts. Encouraging illegal immigration as the President's policies have done is the very opposite of compassionate and humane. There is nothing compassionate about policies that encourage people to attempt the dangerous trip across our southern border, to run the risk of exploitation and disease and exposure and death; nor is it compassionate to condemn border cities to dealing with a never-ending flood of illegal immigration and other cross-border illegal activity.

On top of all that, the kind of unchecked illegal immigration we have been seeing is an open invitation—an open invitation—to drug traffickers, human smugglers, and other dangerous individuals.

Our Nation is currently in the midst of a serious fentanyl crisis. In fact, right now, fentanyl overdose is the leading cause of death of U.S. adults between the ages of 18 and 45. And where is all this fentanyl coming from? Well, most of it is being trafficked across our southern border. And I would be very surprised if the chaos at our southern border isn't facilitating that trafficking.

And—let's be clear—drug trafficking across our southern border doesn't just affect border States; it affects communities around our country. I have

talked to sheriffs in South Dakota, almost as far from our southern border as you can get, who are dealing with fentanyl that has been trafficked across the border from Mexico. Last year, Minnehaha County Sheriff Mike Milstead estimated that 90 percent—90 percent—of fentanyl and methamphetamine in our State, the State of South Dakota, comes through Mexico. Again, I would be very surprised if the chaos at our southern border hasn't facilitated that trafficking.

Our country has been shaped by immigrants from around the world, and I am a strong supporter of legal immigration. I have repeatedly introduced legislation to open up opportunities for individuals to come from abroad and to work here in the United States when employers can't secure enough domestic labor. But immigration has to be legal. It has to be legal for security reasons, for humanitarian reasons, and because we have a responsibility to uphold the rule of law.

I am thankful that the President finally seems to be, at least halfheartedly, acknowledging our border crisis and he has recognized his error in rescinding a number of policies that successfully took pressure off the border. Now let's see how he follows through.

There are definitely things Congress can do to strengthen our border security, deter abuse of our asylum system, and provide resources to those serving on the frontlines against trafficking and smuggling. We can also find ways to address some of the economic factors that influence illegal immigration by leveraging legal pathways to allow immigrants to fill jobs that American employers are struggling to fill.

But the fact of the matter is, while there are things Congress can do to help, the President of the United States doesn't need an act of Congress to move forward on securing the border. The President just needs to enforce the law. For the sake of our national security, our overwhelmed border communities, and the individuals tempted to make the dangerous journey across the border, let's hope he does so.

I yield the floor.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. PADILLA). Without objection, it is so ordered.

IMMIGRATION

Mr. CORNYN. Mr. President, over the past few days, we have seen a number of headlines with surprising announcements about the impact the Biden administration's new border policies have had. Reuters, for example, ran a story

last week titled "U.S. arrests of Cuban, Haitian, Nicaraguan and Venezuelan migrants plummet."

Dallas Morning News had a story titled "Biden administration says illegal border crossings already falling under new policies."

The Wall Street Journal ran a story over the weekend with the headline "Migrant Arrests Fell by Roughly Half in January After New Enforcement Measures."

Well, by reading those headlines alone, you might assume that the administration had finally done something it has refused to do over the last 2 years, and that is to take action to address the migration crisis, the humanitarian and public safety crisis that has been occurring at our southern border. You might think that they started using authorities they already had under existing law to enforce those laws at the southern border and deter would-be migrants from making the dangerous journey north. Well, if you made those assumptions, you would be wrong. That is not the case at all.

As we know, the border has been operating at a state of crisis for at least the last 2 years. Last year alone, U.S. Customs and Border Protection encountered 2.4 million migrants, completely shattering previous records. Last month, we broke the record for monthly encounters. The Agency logged more than a quarter of a million—more than 250,000—border crossings in December alone.

Here is the ugly little secret that the Biden administration so far has failed to acknowledge: Vice President KAMALA HARRIS talks about going to Central America, talks about root causes of the migration crisis, and Secretary Blinken talks about root causes, assuming that this is a regional matter affecting Mexico and Central America and that it is primarily people who are coming to the United States strictly for economic reasons or to flee violence. But the fact of the matter is, people are coming from all over the world to our doorstep and seeking asylum.

A couple of weeks ago, we had a bipartisan congressional trip to El Paso, an urban area. We then went to Yuma, AZ, which is a sleepy little agricultural community right there along the border of Arizona and California. The acting Border Patrol chief told us that they had people from 176 countries, speaking 200 languages, seeking asylum, coming to the Yuma port of entry.

You might ask, how in the world is that possible? That doesn't sound like root causes; that sounds like a global network of human struggling that is exploiting our asylum laws to gain entry into the United States.

Well, Senator MARK KELLY from Arizona, who was with us, said: Well, Mexicali, which is a relatively large city in northern Mexico, just across the border from Yuma, has an airport, and presumably people are flying into

Mexicali from disparate places around the world because they know that if they show up at this port of entry in Yuma, they are likely to gain entry into the United States by claiming asylum, and they know that because of the backlog in asylum cases, their case is not likely to be heard for literally years and that if they did ultimately appear in front of an immigration judge, their chances of successfully gaining asylum, according to the legal standard under American law, was about 10 percent. So it doesn't surprise anybody that many of them don't show up for their court hearing but simply hope to evade detection and be able to permanently settle in the United States.

This is what the Border Patrol calls "no consequences" associated with illegal immigration. What they have told me and anybody else who will listen is that if there are no consequences to coming to the United States and exploiting our asylum system or illegally coming to the United States, then people are going to keep coming.

Indeed, that is what we have seen with an absolute lack of deterrence because of nonenforcement and because of the Biden administration border policies. People all over the world are taking advantage of the Biden administration's weak policies. They are crossing our southern border at an alarming rate, imposing huge burdens on the border communities in States like mine, like Texas, that do not have the resources to meet the demands of this crisis.

It wasn't that long ago that Del Rio, TX, a small community of 35,000 people, had 15,000 Haitians arrive in their city and claim asylum. As it turned out, many of those Haitians had been living in South America, having fled Haiti previously, but they had been living more or less peacefully in South America. But because they saw an opportunity to come to the United States and exploit this same asylum system, they showed up in Del Rio, TX—35,000 people—15,000 of them, overwhelming the capacity of that small city to deal with them.

Until recently, the administration saw two options when it came to migrants. Option No. 1 was to use the authority granted under title 42 to expel these individuals to Mexico. Of course, title 42 is a public health title that has been in place because of COVID. Option No. 2 was to parole them. Basically, that means to grant them permission to enter the United States, where they would await immigration court proceedings, which, as I said, because of the backlog, because of the sheer volume, will take years.

Under the administration's so-called new plan, there is now another option for Cubans, Haitians, Nicaraguans, and Venezuelans. So that is four countries. There is a new option for people coming from those four countries. It apparently doesn't apply to the other 172 countries that the Yuma Border Patrol